

LAW OFFICES
WULFSBERG REESE COLVIG & FIRSTMAN
PROFESSIONAL CORPORATION
KAISER CENTER
300 LAKESIDE DRIVE, 24TH FLOOR
OAKLAND, CALIFORNIA 94612-3524
TELEPHONE (510) 835-9100

1 WULFSBERG REESE COLVIG & FIRSTMAN
PROFESSIONAL CORPORATION

2 Eric J. Firstman – 111534

Gregory R. Aker – 104171

3 William L. Darby – 133325

Richard E. Elder- 205389

4 300 Lakeside Drive, 24th Floor

Oakland, CA 94612-3524

5 Telephone: (510) 835-9100

Facsimile: (510) 451-2170

6 e-mail: gaker@wulfslaw.com

7 Attorneys for Plaintiffs

CITY OF ALAMEDA, and its

8 Department, ALAMEDA POWER & TELECOM

9 OFFICE OF THE CITY ATTORNEY

10 CITY OF ALAMEDA

Teresa L. Highsmith – 155262

11 2263 Santa Clara Avenue, Room 280

Alameda, California 94501

12 Telephone: (510) 747-4750

Facsimile: (510) 747-4767

13 Email: thighsmi@ci.alameda.ca.us

14 Attorneys for Plaintiffs and Counterclaim Defendants

15 CITY OF ALAMEDA

16 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 CITY OF ALAMEDA, CALIFORNIA, on
behalf of itself and ALAMEDA POWER &
19 TELECOM, a department of the City of
Alameda, ALAMEDA PUBLIC FINANCING
20 AUTHORITY; and ALAMEDA PUBLIC
IMPROVEMENT CORPORATION,
21 Municipal Corporation,

22 Plaintiff,

23 vs.

24 NUVEEN MUNICIPAL HIGH INCOME
OPPORTUNITY FUND; THE NUVEEN
MUNICIPAL TRUST; and NUVEEN ASSET
25 MANAGEMENT, INC,

26 Defendants.

27
28 And Related Actions

Case No. C 08-004575 SI

STIPULATED PROTECTIVE ORDER

Judge: The Hon. Susan Illston

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
 3 proprietary, or private information for which special protection from public disclosure and from
 4 use for any purpose other than prosecuting this litigation and its related case would be warranted.
 5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 7 all disclosures or responses to discovery and that the protection it affords extends only to the
 8 limited information or items that are entitled under the applicable legal principles to treatment as
 9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated
 10 Protective Order creates no entitlement to file confidential information under seal; Civil Local
 11 Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be
 12 applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Party: any party to this action, including all of its officers, directors, employees,
 15 consultants, retained experts, and outside counsel (and their support staff).

16 2.2 Disclosure or Discovery Material: all items or information, regardless of the
 17 medium or manner generated, stored, or maintained (including, among other things, testimony,
 18 transcripts, or tangible things) that are produced or generated in disclosures or responses to
 19 discovery in this matter.

20 2.3 "Confidential" Information or Items: information (regardless of how generated,
 21 stored or maintained) or tangible things that qualify for protection under standards developed
 22 under F.R.Civ.P.26(c).

23 2.4 "Highly Confidential"- Attorneys' Eyes Only" Information or Items:
 24 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or
 25 nonparty would create a substantial risk of serious injury that could not be avoided by less
 26 restrictive means.

27 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 28 Producing Party.

1 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
2 Material in this action.

3 2.7. Designating Party: a Party or non-party that designates information or items that it
4 produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential
5 Attorneys' Eyes Only."

6 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
7 "Confidential" or as "Highly Confidential- Attorneys' Eyes Only."

8 2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained
9 to represent or advise a Party in this action.

10 2.10 House Counsel: attorneys who are employees of a Party.

11 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
12 support staffs).

13 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
14 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
15 consultant in this action and who is not a past or a current employee of a Party or of a competitor
16 of a Party's and who, at the time of retention, is not anticipated to become an employee of a Party
17 or a competitor of a Party's. This definition includes a professional jury or trial consultant retained
18 in connection with this litigation.

19 2.13 Professional Vendors: persons or entities that provide litigation support services
20 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
21 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected Material
24 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
25 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
26 parties or counsel to or in court or in other settings that might reveal Protected Material.

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1 4. DURATION

2 Even after the termination of this litigation, the confidentiality obligations imposed by this
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
4 otherwise directs.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
7 non-party that designates information or items for protection under this Order must take care to
8 limit any such designation to specific material that qualifies under the appropriate standards. A
9 Designating Party must take care to designate for protection only those parts of material,
10 documents, items, or oral or written communications that qualify - so that other portions of the
11 material, documents, items, or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
14 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
15 unnecessarily encumber or retard the case development process, or to impose unnecessary
16 expenses and burdens on other parties), expose the Designating Party to sanctions.

17 If it comes to a Party's or a non-party's attention that information or items that it designated
18 for protection do not qualify for protection at all, or do not qualify for the level of protection
19 initially asserted, that Party or non-party must promptly notify all other parties that it is
20 withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or
22 as otherwise stipulated or ordered, material that qualifies for protection under this Order must be
23 clearly so designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (apart from transcripts of depositions or
26 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
27 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" at the top of each page that contains
28 protected material If only a portion or portions of the material on a page qualifies for protection,

the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY").

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 45 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"). Only those portions of the testimony that are appropriately designated for protection within the 45 days shall be covered by the provisions of this Stipulated Protective Order.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as "Confidential" or as "Highly Confidential- Attorneys' Eyes Only."

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as "Confidential" or "Highly Confidential- Attorneys' Eyes Only" does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material If material is appropriately designated as "Confidential" or "Highly Confidential- Attorneys' Eyes Only" after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is

1 treated in accordance with the provisions of this Order.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
4 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
5 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
6 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
7 after the original designation is disclosed.

8 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's
9 confidentiality designation must do so in good faith and must begin the process by serving written
10 objections or conferring with counsel for the Designating Party.

11 6.3 Judicial Intervention. A Designating Party that elects to press a confidentiality
12 designation after considering the objection offered by the Challenging Party may, within 21 days
13 of receipt of the objection or conferring with the Challenging Party, file and serve a motion under
14 Civil Local Rule 7 that identifies the challenged material and sets forth in detail the basis for the
15 designation. Each such motion must be accompanied by a competent declaration that affirms that
16 the movant has met and conferred in good faith and that sets forth with specificity the justification
17 for the confidentiality designation.

18 The burden of persuasion in any such challenge proceeding shall be on the Designating
19 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
20 question the level of protection to which it is entitled under the Producing Party's designation.

21 If a Designating Party fails to make such a motion within 21 days of receipt of written
22 objections or conferring with the Challenging Party, the level of protection to which the material in
23 question shall be entitled shall be downgraded to the level advocated by the Challenging Party.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
26 produced by another Party or by a non-party in connection with this case only for prosecuting,
27 defending, or attempting to settle this litigation or its related case. Such Protected Material may be
28 disclosed only to the categories of persons and under the conditions described in this Order. When

1 the litigation has been terminated, Receiving Parties will comply with the provisions of section 11,
2 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location and in
4 a manner reasonably calculated to limit access to the persons authorized under this Order.

5 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
6 by the court or permitted by the Designating Party, a Receiving Party may disclose any
7 information or item designated CONFIDENTIAL only to:

8 (a) the Receiving Party's Outside Counsel of record in this action, as well as
9 employees of said Counsel;

10 (b) the officers, directors, and employees (including House Counsel) of the
11 Receiving Party;

12 (c) experts (as defined in this Order) of the Receiving Party;

13 (d) the Court and its personnel;

14 (e) court reporters, their staffs, and professional vendors to whom disclosure is
15 reasonably necessary for this litigation;

16 (f) during their depositions, witnesses in the action to whom disclosure is
17 reasonably necessary

18 (g) the author of the document or the original source of the information.

19 (h) outside counsel for the parties in the related action, as well as employees of said
20 counsel.

21 7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"
22 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
23 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
24 CONFIDENTIAL -ATTORNEYS' EYES ONLY" only to:

25 (a) the Receiving Party's Outside Counsel of record in this action, as well as
26 employees of said Counsel;

27 (b) House Counsel of a Receiving Party who has no involvement in competitive
28 decision-making;

(c) Experts (as defined in this Order);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation; and

(f) the author of the document or the original source of the information,

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the Receiving Party shall notify the Designating Party, in writing as soon as practical after receiving the subpoena or order.

The Receiving Party also must inform the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material- and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of the terms of this Order, and (d) request such person or persons to return or destroy all copies of the Protected

1 Material.

2 10. FILING PROTECTED MATERIAL. A Party that seeks to file Protected Material
3 shall do so under seal and shall comply with Civil Local Rule 79-5.

4 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
5 Producing Party, after the final termination of this action and upon request of the designating party,
6 each Receiving Party shall make reasonable efforts to return all Protected Material to the
7 Producing Party or destroy that material, except that in no event shall counsel be required to return
8 or destroy information which has become part of counsel's notes, memoranda, working files or
9 other work product. Counsel shall also be permitted to maintain one (1) complete copy of its file
10 including materials produced in discovery. Any such archival copies that contain or constitute
11 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION),
12 above.

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
15 seek its modification by the Court in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
17 no Party waives any right it otherwise would have to object to disclosing or producing any
18 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
19 Party waives any right to object on any ground to use in evidence of any of the material covered by
20 this Protective Order.

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD. DATED:

22
23 DATED: February 12, 2009

WULFSBERG, REESE, COLVIG & FIRSTMAN, P.C.

24
25
26 By /s/ Gregory Aker
27 Gregory Aker
28 Attorney for Plaintiff and Counterclaim Defendant
The City of Alameda California

LAW OFFICES
WULFSBERG REESE COLVIG & FIRSTMAN
PROFESSIONAL CORPORATION
KAISER CENTER
300 LAKESIDE DRIVE, 24TH FLOOR
OAKLAND, CALIFORNIA 94612-3524
TELEPHONE (510) 835-9100

1
2
3 DATED: February 12, 2009

DAVIS & CERIANI, P.C.

4
5 By /s/ Melissa Hessler

MICHAEL P. CILLO
MELISSA J. HESSLER

6
7 Attorneys for Defendants and Counterclaimants
NUVEEN MUNICIPAL HIGH INCOME
8 OPPORTUNITY FUND, et al.

9
10 DATED: February 12, 2009

SHARTSIS FRIESE LLP

11
12 By /s/ Jahan Raissi

ROBERT C. FRIESE
JAHAN P. RAISSI

13
14 Attorneys for Counterclaim Defendant
15 STONE & YOUNGBERG LLC

16
17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18
19 DATED: _____



The Hon. Susan Ilston
United States District/Magistrate Judge